

REVIEW RESOURCES

Lesson 12: Contract Management: Planning for Solicitation

Definition of a Contract

A contract:

- Establishes a legal relationship between two parties;
- Defines the rights and responsibilities of each party;
- Allows for changes within the terms and conditions of the legal relationship; and
- Requires five essential elements to be binding.

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Elements of a Contract

Essential Elements	Features
Offer	Must: <ol style="list-style-type: none">1. Express intent2. Be communicated3. Have complete terms (price, quantity, quality, and delivery)4. Be clear and unambiguous
Acceptance	Must be: <ol style="list-style-type: none">1. Timely2. Clear and unequivocal3. A mirror image of the offer
Consideration	Types include: <ol style="list-style-type: none">1. An act2. Forbearance to act3. Sufficiency and adequacy
Legal and Binding	Objective or purpose needs to be legal to be enforced in court.
Competent Parties	Both parties must be legally competent for a contract to be binding.

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The Federal Acquisition Regulations System

The Federal Acquisition Regulations System establishes the policies and procedures for acquisition by all executive agencies. It consists of the following:

- Federal Acquisition Regulations (FAR)
- The DOD FAR Supplement
- Agency supplements and acquisition regulations

The Contracting Officer uses the FAR to carry out the contracting process.

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The Contracting Officer

The Contracting Officer (CO) has the authority to:

- Enter into, administer, and/or terminate contracts, and
- Make related determinations and findings.

A CO's authority is given in writing on a Certificate of Appointment (SF 1402), commonly known as a warrant. The three types of Contracting Officers are:

Contracting Officer	Responsibilities
Procuring Contracting Officer (PCO)	The Procuring Contracting Officer: <ol style="list-style-type: none">1. Handles the procurement from the pre-solicitation phase through to contract award (including contract signing on the Government's behalf).2. Has overall responsibility for the contract until it is completed and closed out.
Administrative Contracting Officer (ACO)	The Administrative Contracting Officer performs contract administration functions as assigned by the PCO. FAR 42.302(a) lists 69 functions normally performed by the ACO.
Termination Contracting Officer (TCO)	The Termination Contracting Officer is responsible for negotiating any settlement with the contractor after the Procuring Contracting Officer issues a notice of termination.

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Roles of the Program Manager and the Contracting Officer

The Program Manager (PM) has the overall responsibility for bringing the program in on time and within budget. The CO is the business advisor to the PM and is responsible for ensuring that all acquisition laws and regulations are followed.

Following is a comparison of the roles assigned to the PM and CO.

	Program Manager	Contracting Officer
Authority	Charter (Army & Navy) Program Management Directive (AF)	Warrant
Responsibility	Entire program	Contract
Background/Training	Technical	Business
Guiding Directives	DOD 5000 series	FAR
Organization	Program office (IPT)	Matrix (IPT)

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Competition Requirements

The competition requirements ensured by the Competition in Contracting Act include:

Competition Requirements	Description
Requirement for full and open competition	Full and open competition means all responsible sources are permitted to compete (FAR 6.003). The CO decides how full and open competition will be achieved.
Allowance for full and open competition after exclusion of sources	<p>Excluding sources may be done for:</p> <ol style="list-style-type: none"> 1. Establishing or maintaining alternate sources. Key is that the Government has more than one source for providing supplies or services whenever possible. 2. Set-asides for small business concerns, designed to promote the participation of small business concerns in defense contracting. 3. Section 8(a) program, designed to promote the participation of eligible, small disadvantaged business concerns in defense contracting.
Provision for seven exceptions to full and open competition	<p>Seven exceptions to full and open competition include:</p> <ol style="list-style-type: none"> 1. Only one responsible source will satisfy agency requirements. 2. Unusual and compelling urgency. 3. Industrial mobilization. 4. International agreement. 5. Authorized or required by statute. 6. National security. 7. Public interest.
Requirement for approval of exceptions to full and open competition	Approval of an exception to full and open competition is accomplished by the execution of a Justification and Approval (J&A) or a Determination and Finding (D&F) as required by FAR Subpart 6.3.

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Determination of Requirements

For a requirement to initiate the contracting process:

- A need must be identified,
- A non-materiel solution must not be available, and
- Approval must be given to pursue a materiel solution.

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The Requirements Package

The requirements package may contain the following:

- Management reviews and approvals.
- Certification of funds availability.
- Description of the requirements.
- Specifications (performance or detail).
 - Statement of Work (SOW)/Statement of Objective (SOO). (The SOO establishes a broad description of the Government's required performance objectives.)
 - Purchase descriptions.
 - Contract data requirements.
- Any special packaging and marking requirements.
- Inspection and acceptance requirements.
- Delivery or performance requirements.
- Any special contract administration requirements.
- Any special provisions or clauses.
- Recommended evaluation factors for contract award.
- Evaluation criteria for the evaluation factors.
- Recommended potential sources and results of market research.
- Input for approval of other than full and open competition, if needed.
- Acquisition Plan, if required.

The requirements package is put together by the Program Manager's Integrated Product Team (IPT) and delivered to the Contracting Officer.

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Methods of Contracting

The two primary methods of contracting are:

- Sealed bidding
- Contracting by negotiation

Sealed Bidding is used if:

- Time permits,
- Award is based on price and other price-related factors,
- Discussions are not necessary, and
- There is a reasonable expectation of competition (more than one sealed bid).

Any contract awarded without using sealed bidding is a **negotiated contract**. Types of negotiated contracts include:

- Sole source, which is a contract entered into, or proposed, after soliciting and negotiating with only one source.
- Competitive, in which more than one contractor is sought to solicit an offer, with the winner being selected on the basis of criteria established by the Government.

The following table summarizes the differences between sealed bidding and negotiated contracts.

Sealed bidding	Negotiated
Well-defined requirements	Less well-defined requirements
Adequate competition required	Competitive or sole source
Uses an Invitation for Bid (IFB) solicitation	Uses a Request for Proposal (RFP) solicitation
Award based on price and price-related factors	Award based on evaluation criteria
No discussions allowed	Discussions/negotiations usually required

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Types of Contracts

The two broad categories of contracts are:

- Fixed-price
- Cost-reimbursement

Other contract types combine features of these two categories. The following table compares fixed-price and cost-reimbursed contracts.

Fixed-price contracts	Cost-reimbursed contracts
Low risk to the Government	Higher risk to the Government
Well-defined requirements	Less well-defined requirements
Guaranteed delivery by the contractor	Contractor's best effort
Payment after delivery or performance	Payment as costs are incurred
Profit based on efficient performance and cost control	Fee or formula to compensate the contractor beyond cost
Use of either an IFB or RFP	Use of an RFP

Review the comparison of the general contract types:

	Fixed-Price	Cost-Reimbursement
What is promised?	Acceptable goods and services	Best efforts
When is payment?	After delivery (progress payment possible)	As costs are incurred
Cost risk to: Contractor	High	Low
Government	Low	High

Other contract types include indefinite delivery, time-and-materials, and letter. The following table describes these contracts.

This type of contract ...	Provides for ...	And may be used when ...
Indefinite Delivery: Definite Quantity	Delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.	<ol style="list-style-type: none"> 1. A definite quantity of supplies or services will be required during the contract period. 2. The supplies or services are regularly available or will be available after a short lead time.
Indefinite Delivery: Indefinite Quantity	An indefinite quantity, within stated limits, of supplies or services to be furnished during a fixed period, with deliveries or performance to be scheduled by placing orders with the contractor.	Exact quantity of supplies or services is unknown.
Indefinite Delivery- Requirements	Filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.	Acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.
Time-and-Materials	<p>Acquiring supplies and services on the basis of direct labor hours and materials at cost.</p> <p>A labor-hour contract is a variation differing only in that materials are not supplied by the contractor.</p>	It is not possible at the time of placing the contract to estimate accurately the extent and duration of work or to anticipate cost with any reasonable degree of confidence.
Letter	A written preliminary contractual instrument containing a price ceiling that authorizes the contractor to begin immediately manufacturing supplies or performing services.	<ol style="list-style-type: none"> 1. The Government's best interests demand that the contractor be given a binding commitment so that work can begin immediately. 2. Negotiating a definitive contract is not possible in sufficient time to meet the requirements.



Indefinite delivery contracts permit the Government to maintain only a minimum stock level by using direct shipments for the contractor with flexible delivery schedules. Indefinite Quantity/Indefinite Delivery and Requirements contracts (also known as delivery-order or task-order contracts) also permit flexibility in quantity purchased, minimizing the Government's obligation under the contract.

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